

1 Mark S. Perelman - 120961
Kimberly A. Shields - 245326
2 MURPHY, PEARSON, BRADLEY & FEENEY
88 Kearny Street, 10th Floor
3 San Francisco, CA 94108-5530
Tel: (415) 788-1900
4 Fax: (415) 393-8087

5 Attorneys for Defendant
WASHOE HOUSE, INC.
6
7

8 UNITED STATES DISTRICT COURT
9 NORTHERN DISTRICT OF CALIFORNIA
10

11 DAREN HEATHERLY, an individual; and
DISABILITY RIGHTS, ENFORCEMENT,
12 EDUCATION, SERVICES: HELPING YOU
HELP OTHERS, a California public benefit
13 corporation,

14 Plaintiffs,

15 v.

16 WASHOE HOUSE, INC., a California corporation,
17 Defendants.
18
19
20
21
22
23
24

Case No.: CV-08-0736 MMC

STIPULATION AND ~~PROPOSED~~ ORDER
RE: ADDITIONAL REMEDIATIONS TO
WASHOE HOUSE POTENTIALLY
COVERED BY THE AMERICANS WITH
DISABILITIES ACT AND RELATED
STATUTES

25 ///

26 ///

27 ///

STIPULATION

This Stipulation Re: Additional Remediations To Washoe House Potentially Covered by the Americans With Disabilities Act and Related Statutes (the "Stipulation") is hereby entered into by counsel for Plaintiffs DAREN HEATHERLY and DISABILITY RIGHTS, ENFORCEMENT, EDUCATION, SERVICES: HELPING YOU HELP OTHERS ("Plaintiffs") on the one hand, and counsel for Defendant WASHOE HOUSE, INC. (the "Washoe House" or "Defendant") on the other hand.

1. Whereas, Plaintiffs filed a Complaint alleging violations of the Americans with Disabilities Act (the "ADA") and related statutes against the Washoe House on January 31, 2008.

2. Whereas, on June 19, 2008, Plaintiffs submitted a demand letter to Defendant outlining the various barriers that would need to be remediated in order to settle this lawsuit. A true and correct copy of this letter is attached hereto as Exhibit "A."

3. Whereas, counsel for Defendant retained a licensed architect to create plans for implementing the remediations proposed by Plaintiffs in their June 19, 2008 demand letter. A true and correct copy of these plans is attached hereto as Exhibit "B."

4. Whereas, counsel for Plaintiffs approved of the Washoe House's architect's plans in their letter dated November 3, 2008. A true and correct copy of this letter is attached hereto as Exhibit "C."

5. Whereas, the Washoe House presented Plaintiffs with a timeline for completing the proposed plans in an email message dated December 12, 2008. A true and correct copy of this email message is attached hereto as Exhibit "D."

6. Whereas, counsel for Plaintiffs approved of the proposed timeline during a pre-mediation conference with court-appointed mediator Daniel Bowling on January 9, 2009.

7. Whereas, counsel for both parties is informed and believes that additional portions of the Washoe House not addressed by Plaintiffs' June 19, 2008 demand letter may or may not pose further barriers to persons with disabilities.

8. Whereas, the parties to this action have read the Declaration submitted by the Washoe

House's architect in this action. Based on the foregoing, the parties hereby stipulate that there may be additional barriers at the Washoe House that are not addressed in Plaintiffs' June 19, 2008 demand letter. The costs and expenses necessary to remediate these potential barriers would be unduly burdensome and therefore not "readily achievable" for the Washoe House to complete. Accordingly, the parties hereby stipulate that the additional, potential barriers not addressed by Plaintiffs' demand letter do not violate the ADA or related statutes. A true and correct copy of the architect's Declaration is attached hereto as Exhibit "E."

Dated: 5/4, 2009

THE FRANKOVICH GROUP LAWYERS

By 

Thomas E. Frankovich
Attorneys for Plaintiffs
DAREN HEATHERLY, an individual; and
DISABILITY RIGHTS, ENFORCEMENT,
EDUCATION, SERVICES: HELPING YOU HELP
OTHERS, a California public benefit corporation,

Dated: 4/14, 2009

MURPHY, PEARSON, BRADLEY & FEENEY

By 

Mark S. Perelman
Kimberly A. Shields
Attorneys for Defendant
WASHOE HOUSE, INC.

[PROPOSED] ORDER

The Court, having considered the foregoing, hereby enters an Order finding that the additional portions of the Washoe House not addressed in Plaintiffs' June 19, 2008 demand letter, but that nonetheless may violate the ADA and related statutes, are not "readily achievable" for the Washoe House to complete.

Dated: June 5, 2009

By 

The Honorable Maxine M. Chesney